

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JUSTIN HICKOX,	:	Civil No. 4:17-CV-2010
	:	
Plaintiff,	:	
	:	(Judge Brann)
v.	:	
	:	
BANK OF AMERICA, et al.,	:	(Magistrate Judge Carlson)
	:	
Defendants.	:	

MEMORANDUM AND ORDER

The background of this order is as follows:

The plaintiff, a state prisoner, commenced this action by a complaint on November 2, 2017, which alleged that the defendants have violated the Fair Credit Reporting Act, by falsely and erroneously reporting delinquencies on various checking accounts which Hickox asserts were opened fraudulently by unknown parties in his name while he has been incarcerated.(Doc. 1.) This case comes before the court on a motion to strike the plaintiff’s demand for a jury trial. (Doc. 10.) In this motion, Bank of America argues that the plaintiff is bound by the bank’s account agreement, which provides for a jury trial waiver. (Doc. 11.)

Hickox has responded to this motion in a straightforward fashion, asserting that since the gist of his claim is that he did not open this account, and some unknown person has opened the account fraudulently in his name, he cannot be

bound by the terms of the account agreement since he never actually agreed to those terms.

We concur. In this case, the gravamen of Hickox's complaint is that he did not agree to open this bank account. Therefore, the issue of whether he is bound by the terms of the account agreement is inextricably bound up with the merits of Hickox's claims. Under these circumstances, the motion to strike the jury trial demand is premature and must await further development of the factual issues which lie at the heart of this lawsuit.

Accordingly, for the foregoing reasons, the defendant's motion to strike jury trial demand (Doc. 10), is DENIED without prejudice.

SO ORDERED, this 2d day of February, 2018.

/s/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge